

copy → Art OK 10
original → Mike P.

Full-Diamond Head
Commander (mep)
Third Coast Guard District
Governors Island
New York, NY 10004
(212) 668-7459

CERTIFIED MAIL RETURN RECEIPT REQUESTED

16460
29 January 1981

Charles F. Mandell
190 Lincoln Highway
Edison, NJ 08817

Re: DIAMOND OIL
03-946/77 mep

Dear Mr. Shur:

The hearing you requested is scheduled for 1:30 PM 26 February 1981 in room 110, building 108, Governors Island, New York. Governors Island is reached by a Coast Guard operated ferry which departs the Battery Area of Manhattan on a fifteen minute schedule.

The witnesses you requested will be limited to Ms. Michael Polato and Mr. A. R. Gewirtz. Mr. Joseph Marishah and Mr. Clark Price are out of the country in fact, Mr. Price is no longer a government employee.

Sincerely yours,

J. M. MULLEN
Hearing Officer

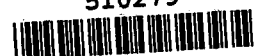
Copy: EPA Region 2

RECEIVED

FEB 9 1981

Emergency Response
and Inspection Branch
Edison, N. J.

510279



Fred
Artie G.

As per the attached note, the hearing on Diamond
Head is scheduled on February 26, 1981 at 1:30
Please contact Cmdr Mullen for your individual
involvement.

Mike Pitts

| MEMORANDUM OF CALL | | |
|--|--|---|
| TO: <u>Mike</u> | | |
| <input checked="" type="checkbox"/> YOU WERE CALLED BY — <u>Cmdr Jim Mullen</u> | | |
| <input type="checkbox"/> YOU WERE VISITED BY — | | |
| OF (Organization) <u>3rd CC Hearing Office</u> | | |
| <input type="checkbox"/> PLEASE CALL → | PHONE NO. <u>664-7849</u> | <input checked="" type="checkbox"/> FTS |
| <input type="checkbox"/> WILL CALL AGAIN | <input type="checkbox"/> IS WAITING TO SEE YOU | |
| <input type="checkbox"/> RETURNED YOUR CALL | <input type="checkbox"/> WISHES AN APPOINTMENT | |
| MESSAGE | | |
| <u>He has scheduled</u> <u>hearing for Diamond</u> <u>Head - 1330 WRS, 2/26/81</u> | | |
| RECEIVED BY <u>Paul</u> | DATE <u>1/28/81</u> | TIME <u>1030</u> |
| 63-109 | | |
| STANDARD FORM 63 (Rev. 8-76) Prescribed by GSA FPMR (41 CFR) 101-11.6 | | |

1/12/81

Memorandum to File -

On Friday (1/9/81) I called
Commander Mullen with respect to his request
for our cooperation in attendance at a hearing
on Diamond Head Oil.

Of the dates ARTIE, I and Jim Mullen would
be available February 5, 11 and 12 were mutually
acceptable. He would propose these dates to Attorney
Mandell. To date Cmdr Mullen has not gotten back to me.

I advised of N.J. State's concern with the hearing,
(legal subterfuge) but much to my surprise, N.J. had not
contacted him as they* advised they would -

c.c. A. BEVIRTZ
A. RUBEI

Mike Polito

* Tom Germaine.

Fred -

Will take me about 2 days preparation
(Reading the entire file - past depositions)

Spoke to T. Bermie - he is upset - State may intervene

Arte can not make it until 10.-

Otherwise - I would like to cooperate ~~my~~ way I can with everyone

[Signature]

5, 11, 12

1/9/81 Called Mullen - Advised him about Bermie concern - gave
him phone number - Bermie did not contact him yet.
Dates 5, 11, 12 OK Mullen will get back to me

(2) 340 6658

CHARLES F. MANDELL

A PROFESSIONAL CORPORATION

COUNSELLOR AT LAW

190 LINCOLN HIGHWAY

EDISON, NEW JERSEY 08817

212-668-7849

CHARLES F. MANDELL

AREA CODE 201

494-3333

PAUL H. SHUR

N.J. & FLA. BAR

STEVEN A. HERMAN

N.J. & N.Y. BAR

November 24, 1980

J. M. Mullen, Hearing Officer
Department of Transportation
United States Coast Guard
Third Coast Guard District
Governors Island
New York, New York 10004

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RECEIVED

DEC 15 1980

Emerg. and Inspection Branch
Edison, N. J. SECTION
THIRD COAST DISTRICT

Re: Diamond Head Oil Refining Corp.-
Coast Guard

Dear Mr. Mullen:

We acknowledge receipt of your letter dated November 5, 1980 with reference to the above matter. We reiterate our request made in our letter dated March 24, 1980 for a hearing.

It is our opinion that witnesses will be necessary to attend and testify at a formal hearing. We request your assistance in obtaining the personal appearance of all witnesses set forth in the memoranda-discovery you have provided to us. These written memoranda raise substantial factual issues which we believe must be resolved prior to a decision. Therefore, we request that the Coast Guard require the attendance of the following witnesses, pursuant to section 1.07-50 of the Rules and Regulations:

Joseph Marishak
Clark Price
Michael Polito
A. H. Gevirtz

} EPA employees

Based upon our review of the memoranda themselves, we see the following factual issues:

1. The memorandum report of Joseph Marishak regarding an oil flow on June 14, 1976 does not state the property on which the alleged oil flow was observed.

CHARLES F. MANDELL

J. M. Mullen, Hearing Officer
November 24, 1980
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2. The inspection conducted by A. H. Gevirtz on June 22, 1976 does not specify the property on which "lakes and lagoons" were observed. Moreover, Mr. Gevirtz has stated in his memorandum that he traced the oil observed to the "oil lake" located on property owned by the Department of Transportation of the State of New Jersey, not property owned by our client. Finally, Mr. Gevirtz refers to a "stream" on the "eastern corner" of New Jersey Department of Transportation property (not property owned by our client) as having a connection with the alleged oil flow.

3. While Mr. Gevirtz describes "evidence of fresh dikes" in the area, he does not say on whose property he saw the dikes.

4. Mr. Gevirtz states that he conducted an inspection on June 25, 1976 where he "observed a brownish liquid being delivered through a pipe to a lagoon in the rear of Diamond Head." He does not say whether or not the lagoon was located on property owned by our client. Mr. Gevirtz does refer to having taken photographs of the entire area. We respectfully request copies of these photographs in advance of a hearing for our review.

5. Mr. Gevirtz describes an inspection on June 26, 1976 in which he states that he observed a "continuous discharge from a four-inch pipe" in the vicinity of "an undiked area." Again, Mr. Gevirtz does not state on whose property this four-inch pipe was located.

6. Clark Price, in his memo dated July 12, 1976, confirmed that the source of the oil in the marsh area was from property owned by the New Jersey Department of Transportation, not property owned by our client.

We take the position that the imposition of a penalty by the United States Coast Guard in a summary manner without a hearing would be unfair, premature and a violation of due process of law.

CHARLES F. MANDELL

J. M. Mullen, Hearing Officer
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In addition to the foregoing, we bring to your attention the fact that the New Jersey Department of Transportation (DOT) instituted suit against our client, along with other corporations which, at various times, owned an oil rerefinery business located on Harrison Avenue, Kearny, New Jersey. In this suit, the DOT has requested that the courts of New Jersey impose penalties, among other things, under the Federal Water Pollution Control Act for the same alleged violations asserted by the Coast Guard. You should be aware of our client's contentions in the DOT litigation, including the following:

1. The source of the alleged oil spills referred to in your February 26, 1980 letter is in dispute. Our client takes the position that the spill came from the "oil lake" located on DOT property. Thus, it is essential to determine the ownership of the property where the alleged violation occurred. Complicating this issue is the fact that a substantial portion of the property (where the rerefinery was formerly located) was acquired by condemnation proceedings instituted by the DOT in connection with the construction of Interstate Highway 280.

2. While our client denies that any unlawful oil discharges were committed by it, a number of representatives of the New Jersey Department of Environmental Protection intervened on numerous occasions and suggested that certain remedial measures be taken. Some of these remedial measures are referred to in the material which you have provided to us. We also note that a number of the remedial measures were taken by the New Jersey Department of Transportation in connection with its ownership of some of the adjacent properties in the area. Accordingly, if the alleged discharges were the result of actions and/or suggestions by State employees, our client takes the position that it should not be held responsible for any violations which resulted therefrom.

3. One of our client's defenses in the DOT suit is that the area was habitually used by other parties as a dump for waste materials. There has been substantial deposition testimony in the DOT litigation to this effect. We think it is necessary for this discovery to be considered by the Coast Guard prior to rendering a decision in this matter.

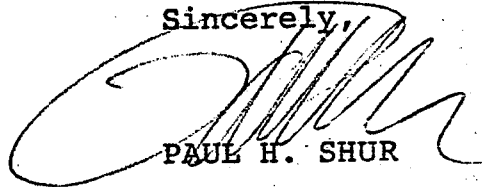
CHARLES F. MANDELL

J. M. Mullen, Hearing Officer
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4. We take the position that at the time of the alleged discharges, the Department of Transportation had initiated its preliminary highway construction. This resulted in the piling of mounds of fill and other waste material in the area, changing the contour of the entire area and drainage patterns. This has a bearing on the responsibility for any discharges that may have resulted.

The complexity of this matter defies a simple resolution. Therefore, we request the opportunity to informally discuss the above with you prior to a formal hearing. If such a formal hearing is scheduled, we request that it be held sometime after January 1, 1981.

Sincerely,



PAUL H. SHUR

PHS:jl